

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN MICHAEL PARASKI,

Defendant-Appellant.

UNPUBLISHED

May 2, 2006

No. 260978

Wayne Circuit Court

LC No. 04-008109-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a concealed weapon, MCL 750.227, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to three years' probation for the CCW and assault convictions, to be served consecutive to a two-year prison term for the felony-firearm conviction. The trial court denied defendant's motion for a new trial or evidentiary hearing based on ineffective assistance of counsel. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case essentially involved a credibility contest between defendant and the complainant, Shane Strickland. Defendant contends that he was entitled to a new trial due to trial counsel's failure to discover and utilize evidence of Strickland's history of mental illness to impeach his credibility. Defendant preserved this issue by moving for a new trial below. However, because the trial court did not conduct an evidentiary hearing, review is limited to the facts on the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel's performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel's error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel's conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), *aff'd* 468 Mich 233 (2003) (citations omitted).]

Decisions regarding how to cross-examine and impeach witnesses are matters of trial strategy. *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999); *People v McFadden*, 159 Mich App 796, 800; 407 NW2d 78 (1987). “This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel’s competence with the benefit of hindsight.” *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). “Defendant is entitled to relief only in those instances where his attorney’s omission deprived defendant of a substantial defense.” *People v Hopson*, 178 Mich App 406, 412; 444 NW2d 167 (1989). “A substantial defense is one that might have made a difference in the outcome of the trial.” *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990).

Evidence showing bias or prejudice of a witness is always relevant because witness credibility is a material issue in every case. *Powell v St John Hosp*, 241 Mich App 64, 72; 614 NW2d 666 (2000). Thus, a witness may be cross-examined about his or her credibility. MRE 611(b). “[A] history of mental illness is not *necessarily* admissible as impeachment evidence,” *United States v Smith*, 316 US App DC 199, 204; 77 F3d 511 (1996) (emphasis in original), but a witness’s psychiatric history may be admissible when it affects his credibility. *United States v Sasso*, 59 F3d 341, 347 (CA 2, 1995). “[F]ederal courts appear to have found mental instability relevant to credibility only where, during the time-frame of the events testified to, the witness exhibited a pronounced disposition to lie or hallucinate, or suffered from a severe illness, such as schizophrenia, that dramatically impaired her ability to perceive and tell the truth.” *United States v Butt*, 955 F2d 77, 82-83 (CA 1, 1992). Relevant factors in assessing the probative value of such evidence include the nature of the illness (whether it involves paranoid or delusional thinking), the temporal recency or remoteness of the history, and whether the witness suffered from the effects of the illness at the time of the events to which he is to testify. *Sasso, supra* at 347-348.

Defendant presented evidence to show that Strickland was possibly diagnosed with bipolar disorder as of 1999. In 2003, Strickland indicated that he might have been diagnosed with schizophrenia as well, but was not certain. Defendant did not show that as of April 2004, when the offenses occurred, Strickland was suffering from a type of mental illness that prevented him from accurately perceiving reality or predisposed him to fabricate claims or that any medication prescribed for such illness affected his ability to perceive and understand reality. Absent such a showing, evidence of Strickland’s mental health history is not relevant. *Butt, supra* at 83-84; *Sasso, supra*. Therefore, defendant has not shown that the evidence would have been admissible, much less that it would have affected the outcome of the trial. Further, because defendant’s offer of proof did not suggest that the evidence would have been admissible to impeach Strickland’s credibility, he was not entitled to an evidentiary hearing. See *People v Simmons*, 140 Mich App 681, 685-686; 364 NW2d 783 (1985).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot